

ADDENDUM

On November 3, 2020, voters approved the addition of Section 7, the “Environmental Rights Amendment,” to the constitution of the State of New Union. This new provision, Article 1, Section 7, reads:

Each and every person of this State has a fundamental right to clean air and clean water and to a healthful environment free from contaminants and pollutants caused by humans.

N.U. CONST. art 1, § 7.

Legislative History

Environmental Rights Amendment Assembly Information 2019-2020

BILL NUMBER: A02137

SPONSOR: Wright

TITLE OF BILL: CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

Proposing an amendment to article 1 of the constitution, in relation to the right to clear air and water and a healthful environment free from contaminants and pollutants caused by humans.

PURPOSE OR GENERAL IDEA OF BILL:

The purpose of this bill is to protect public health and the environment ensuring clean air and water, including and not limited to, harms from contaminants and pollutants caused by humans.

JUSTIFICATION:

Ongoing water contamination and air quality pollution have highlighted the importance of clean drinking water and air as well as the need for additional protections. This proposed constitutional amendment will ensure that clean air and water are treated as fundamental rights for the citizens of New Union and to protect the overall health of the people and the environment, in particular from harms caused by un-natural, human-made or human-caused contaminants and pollutants.

PRIOR LEGISLATIVE HISTORY:

2019-22 A.6281 passed assembly

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

[The following are relevant excerpts from testimony during NU ASSEMBLY Nos. A10377 and A10455.]

THE CLERK: Assembly No. A10377, Calendar No. 113, Wright, Johnson, Harrison, Rodriguez, Zimmerman, Hammerlin, Collins, McKean, Wexler, Smyth, Maloney, Flanley, Jonston, Quentin, Munroe, Rivers, Guzman, Chee, Ortega, Medina, Faignoli, Bennett. Concurrent Resolution of the Senate and Assembly proposing an amendment to Article I of the Constitution, in relation to the right to clean air and water and a healthful environment.

ACTING SPEAKER MUNROE: An explanation is requested, Mr. Wright.

MR. WRIGHT: Thank you, Mr. Speaker. This proposed Constitutional amendment would enable the presence in our Constitution of what is clearly something that everyone should be aware is a right, the right to clean air, clean water and a healthful environment, including, and in particular, an environment that is free from human-caused pollutants and contaminants. This proposal is simple, it is not complicated, there are no curve balls. It is what it says: The right that every citizen of our great State should have, to know that they and their families can live and grow them here in this State within a healthful environment with clean air and clean water and free from human-caused contaminants and pollutants.

ACTING SPEAKER MUNROE: Mr. Maloney.

MR. MALONEY: Thank you, Mr. Speaker. Would the sponsor yield?

MR. WRIGHT: I yield.

ACTING SPEAKER MUNROE: Mr. Wright yields.

MR. MALONEY: Thank you, Mr. Wright. A lot of times we look at Constitutional amendments because either the Legislature doesn't have the authority or we need to change restrictions that may apply. Under the current Constitutional provision, are there any restrictions on the Legislature's ability to enact appropriate legislation to ensure clean air, clean water or a healthy environment?

MR. WRIGHT: No.

MR. MALONEY: We have the Department of Natural Resources, which receives from us substantial funding every year, we appropriate \$250 million on average every year to the Environmental Protection Fund. Are there any restrictions on the delegation of authority that we give them for them to do their work in protecting our air and our water?

MR. WRIGHT: No.

MR. MALONEY: Okay, but this Legislature has very broad power to enact laws to ensure clean air and water and a healthy environment. In conjunction with that, we already have given our regulatory agencies a great deal of discretionary authority to pursue clean air and clean water

through regulations. We have a number of statutory provisions. If we enact this as a Constitutional amendment, would it then not be the courts, not the Legislature, that decide whether or not someone's individual right to clean air and clean water or a healthy environment is being violated? Why would we want to transfer authority from this Legislature and our environmental experts in the Department of Conversation and the Department of Health and elsewhere to the court system?

MR. WRIGHT: I appreciate your perspective, but I respectfully disagree that we will be transferring anything or losing anything. This is a law that is envisioned to frame the expectation of our citizens that all parts of government - including the Legislature, the Judiciary, the agencies - all are working in concert with one another for a composition that will result in better protection for their families, their communities and the environment.

MR. MALONEY: I think this Constitutional amendment creates uncertainty for a business, that upon seeing this amendment, might claim that our state's regulations or the statutory provisions are simply not clear enough.

MR. WRIGHT: I do not believe there is anything negative about this amendment. It offers no uncertainty, but rather a more clear expectation for all of our citizens as well as all of our legally operating businesses that this state values and has enshrined a fundamental right to clean air and clean water free from contamination caused by humans.

MR. MALONEY: I believe you started out your comments, and I appreciated the fact that you noted that this language is simple and not complicated, right?

MR. WRIGHT: It is.

MR. MALONEY: Which is unique in some respects from a lot of things that we do here. As you know, many of our environmental laws and regulations are extraordinarily voluminous and extraordinarily detailed.

MR. WRIGHT: Yes.

MR. MALONEY: The flip side of language that has no definition, if you will, or no detail is that it doesn't have any detail. So, this language says that everyone has an individual right to clean air and water. Does "clean" mean that the water that's supplied under the public water system doesn't have any additives -- any chemicals added to it? What is "clean"?

MR. WRIGHT: I understand your question. I believe that the intent is very clear, that you should be able to consume water through your public water supply without any harm. That doesn't mean that the water is free or any or all substances besides H₂O. We know that some of the best tasting water is because there are parts of what you're tasting that is not H₂O. Let's be clear: What is appropriate and desirable for a public water supply involves other chemicals, other substances. But they should not harm you. They should not do injury to your young children, to your wife or to your family in any way. They should be objectively perceived as "clean." That's what this means.

MR. MALONEY: So, it's your view that the word "clean" means not harmful?

MR. WRIGHT: "Clean" certainly means healthful to human beings, healthful to our fellow creatures in the environment. "Healthful" means that it will do no harm to consume that water. And if you look at the latter part of this amendment, clean would mean, for example, water that is free of contamination or pollution caused by humans that would make that water unhealthful or harmful to consume.

MR. MALONEY: And would a healthful environment also include issues like food safety? GMOs, for example? Pesticide use on agricultural products? Or other food safety issues?

MR. WRIGHT: I don't think there's any doubt that all of these are part and parcel of what it means to grow up in a healthful environment. If you able to buy fresh produce and the produce is without contamination in the way that nature intended it to be consumed, it will be healthful. If it is something that poisons you, that causes disease or convulsion, that is the opposite. We're looking for the former, not the latter to be the norm in this State.

MR. MALONEY: Thank you very much, Mr. Wright, I know we're out of time. We may talk later. But thank you so much for your comments.

MR. WRIGHT: My pleasure.

MR. HARRISON: Thank you, Mr. Speaker. Will the sponsor yield?

MR. WRIGHT: I yield.

ACTING SPEAKER MUNROE: Mr. Wright yields.

MR. HARRISON: Thank you Assemblyman, just a couple of quick questions. Up in our area in our district we have two very large landfills and we have a lot of trains – we call them trash trains -- coming through our district. And the smell's been an issue. The landfill smell is an issue.

MR. WRIGHT: Okay.

MR. HARRISON: It never seems to stop. So, are those individuals that have those issues with the smell, are they going to have the opportunity to have that addressed through this change?

MR. WRIGHT: They already have that right.

MR. HARRISON: Okay.

MR. WRIGHT: And so, this does not alter their right, either proactively or in a regressive way. This does, however, and I'm glad you raised this particular example. This illustrates that municipalities also would have to really be more conscious and self-conscious and aware of the expectation of their citizens for municipal activities, such as a landfill, to make sure that that landfill is not intruding upon the -- what would, if this becomes law after being voted upon by the people of the State, be a new expectation. Generally, yes, but for many of our citizens, they would look at a landfill such as the one you described which is harming people in the community and they would say, we have a right and our government is not living up to its obligation. Even

odors could be an issue if sufficiently offensive and if they impact what the community would consider “clean” air.

MR. HARRISON: Okay. I thank you for your time and I have nothing else.

ACTING SPEAKER MUNROE: Ms. Collins.

MS. COLLINS: I join my colleague in saying that I think the wording of this Constitutional amendment creates uncertainty for a business, who is already subject to so many of our rules and regulations. We have discussed what the meaning of “clean” could be, or whether odors could affect what makes something clean or not. What are our industries and businesses to do? Should they be worried that if at a future time they learn that their ordinary and legal business leads to what you call “unhealthful environment,” or causes subjectively “unclean” water or air, that they would be facing some kind of suit under this new amendment? Or might there be an exception to this bill excluding such unknown or unknowable future instances?

MR. WRIGHT: I am glad you asked that question. I would say that this amendment certainly would help protect our citizens if, for example, our agencies discover something, or a private entity creates something new that ends up causing harm to our citizens. That is to say, if there is any substance or contaminant that is not currently regulated, and it is discovered at some point in the future to cause some type of harm, to us, to our children, to our environment, then this amendment would fill that gap and help to ensure that no one suffers until such a time as a law is passed to encompass that scenario or substance. In situations like this, where the problem was not anticipated or could not have been foreseen, it would certainly benefit us all to have something like this amendment. This amendment will serve to allow the courts – or an agency, if the authority to speak to such a situation is properly that of an agency - to apply a framework giving us peace of mind and a healthful environment while we - you and I and our colleagues - engage to try to enact new laws to regulate or address the substance or contamination. This amendment would ensure that there is no lapse in the protection of our people in such instances.

MS. COLLINS: I would say that this would create further uncertainty and fear on businesses that could be subject to suit under a law that is not only broadly worded, but that would encompass acts or harm that are not even presently known .

MR. WRIGHT: Yet this is the level of protection we would and are offering to our citizens by enacting this amendment. We are recognizing that this is a fundamental right for our citizens to have clean air and water, and a healthful environment free from contaminants or pollutants caused by humans, at the time this harm is learned, past, present or future, regardless of intention or knowledge on the part of businesses. But as with all fundamental rights, this right would be self-executing and so would not require further definition in regulation or statute.

MS. COLLINS: Okay. I thank you for your time.

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[Assembly No. A10455, Calendar No. 118]

ACTING SPEAKER MUNROE: Mr. Bono.

MR. BONO: Thank you, Mr. Speaker. On the bill.

ACTING SPEAKER MUNROE: On the bill, sir.

MR. BONO: Thank you, Mr. Speaker, I rise to explain my vote. I just want to thank the sponsor of this bill. The reality is that we know that our environment is deteriorating and the issues of climate change have a serious impact on all of us. To make clean water and clean air such a fundamental right, to have them folded in our Constitution, will really take us forward. I want to encourage everyone to think about this as our future as generations come, what we leave behind, what does the air, the water and our environment look like. I encourage us to vote in favor of this bill and I'll be voting in the affirmative. Thank you.

ACTING SPEAKER MUNROE: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER MUNROE: The Clerk will record the vote. (The Clerk recorded the vote.) On a motion by Mr. WRIGHT, the Senate Bill is before the House. The Senate Bill is advanced. Read the last section.

ACTING SPEAKER MUNROE: Mr. Bono in the affirmative. Ms. Collins to explain his vote.

MS. COLLINS: Thank you, Mr. Speaker, I rise to explain my vote. What this bill does, I do not know my constituents or business will know or understand if it were passed. While it is simple, it is too simple, and that makes it unhelpful, unclear, unpredictable. What it will certainly accomplish is invite wide interpretation of how it could be applied or used in court. That this bill could even be applied or used when a substance or harm, previously unknown, becomes known, adds uncertainty upon uncertainty. This will be an unhelpful bill in every respect. So, I will be voting in the negative. Thank you.

ACTING SPEAKER MUNROE: Ms. Collins in the negative. Mr. Wright.

MR. WRIGHT: Thank you, Mr. Speaker. So, this is an historic moment, first passage of a Constitutional amendment that should be part of the basic citizenship of every citizen of this great State. As you can see, it has passed in the Senate. Our passage of it here today is just moments away. I think that this is an expression of optimism that is good news in a -- in a time when our State is assaulted by climate change, by storms that should come once in a century that arrive every three or four years, by the invasion of the southern pine beetle, by all of the ravages of change, people need to know and be assured that we, in the Legislature, are not going to be conceited to think that only we should manage the environment, but that, in fact, citizens have a participatory expectation and right. I'm very pleased that we are about to pass this bill. This proposal is based on the premise that the right to clean air and a -- and clean water and a

healthful environment is an elementary part of living in this great State. I am pleased to vote yes and recommend to my -- my colleagues that they also support this measure. Thank you, Mr. Speaker. Mr. Wright in the affirmative.

ACTING SPEAKER MUNROE: Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Senate Report

Bill Number: A02137

Article 1, Section 7

This Amendment is necessary and justified by the fact that on occasion, the existing statutes and regulations are insufficient to protect the people from exposure to unclean or unhealthful air and water. This shortfall has been evident in New Union and other states where chemicals that are toxic remain unregulated. Where those regulatory gaps exist, the Amendment will serve to create a safety net to ensure that protections of our residents do not fail, and the people of the State will be guaranteed clean air, clean water and a healthful environment, including and in particular due to non-natural, human-caused pollutants and contaminants.